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To: [All of CLAD \(EOIR\)](#); [All of Judges \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Calvert, Irvina \(EOIR\)](#); [Cardenas, Lupe \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Choi, Raphael \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Crossley, Maurice \(EOIR\)](#); [Cudo, Relanie \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [D'Angelo, Matthew \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Gonzalez, Robert \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hammond, Nicole \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Hess, Chris \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [LERS, EOIR \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Mitchell, Carla \(EOIR\)](#); [Morteo, Cristina \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Podgorski, Monika \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)
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**EXECUTIVE OFFICE FOR
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Office of Policy | Legal Education and
Research Services Division

| Policy & Case Law Bulletin
September 7, 2018

Federal Agencies

DOJ

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [Notice of Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children](#)

On September 7, 2018, DHS and HHS requested public comment until November 6, 2018 regarding amendments to regulations relating to the apprehension, processing, care, custody, and release of alien juveniles. The amended regulations would include provisions that parallel the relevant and substantive terms of the Flores Settlement Agreement (FSA) as per *Flores v. Reno*, consistent with the HSA and TVPRA. While it would terminate the FSA, "[t]he rule would satisfy the basic purpose of the FSA in ensuring that all juveniles in the government's custody are treated with dignity, respect, and special concern for their particular vulnerability as minors, while doing so in a manner that is workable in light of subsequent changes." Notably, "the rule would create an alternative to the existing licensed program requirement for family residential centers, so that ICE may use appropriate facilities to detain family units together during their immigration proceedings, consistent with applicable law."

- [USCIS Adjusting Premium Processing Fee for Forms I-129 and I-140](#)

On August 31, 2018, USCIS announced it will adjust the premium processing fee on October 1, 2018 from \$1,225 to \$1,410 for Form I-129 (Petition for a Nonimmigrant Worker) and Form I-140 (Immigrant Petition for Alien Workers) "to more effectively adjudicate petitions and maintain effective service to petitioners."

DOS

- [DOS Designates JNIM as FTO and SDGT](#)

On September 5, 2018, the Department of State designated Jama'at Nusrat al-Islam wal-Muslimin (JNIM) as a Foreign Terrorist Organization (FTO) under the Act, and as a Specially Designated Global Terrorist (SDGT) under Executive Order 13224. "JNIM has described itself as al-Qaida's official branch in Mali, and it has claimed responsibility for numerous attacks and kidnappings since it was formed in March 2017. . . JNIM is led by Iyad ag Ghaly, [also] a U.S.-designated SDGT."

International

UN

- [UNHCR Issues Eligibility Guidelines Regarding Asylum Seekers from Afghanistan](#)

On August 30, 2018, UNHCR issued its "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan," which "are issued against a background of continuing concerns about the security situation and widespread human rights abuses. They contain information on particular profiles of persons for whom international protection needs may arise in the current context in Afghanistan. . . . The analysis contained [therein] is informed by publicly available information as well as by information collected and obtained by UNHCR in the course of its operations in Afghanistan and elsewhere, as well as by other UN agencies and partner organizations."

Third Circuit

- [Tima v. Att'y Gen. of the United States](#)

No. 16-4199, 2018 WL 4225027 (3d Cir. Sept. 6, 2018) (Waiver-237(a)(1)(H))

The Circuit denied the PFR, holding that the fraud waiver under section 237(a)(1)(H) of the Act is limited to removal based on grounds of inadmissibility, not removal based on other grounds, like conviction of a crime involving moral turpitude. In so holding, the court affirmed the Board's decision in [Matter of Tima](#), 26 I&N Dec. 839 (BIA 2016) and joined three other circuits in declining to read the fraud waiver more broadly.

- [United States v. Khim](#)

No. 17-2507, 2018 WL 4201963 (3d Cir. Sept. 4, 2018) (unpublished) (Crime of Violence)

The Third Circuit affirmed the sentence set by the district court, concluding that Khim's prior conviction for first-degree felony robbery under 18 Pa. Cons. Stat. § 3701(a)(1) is a crime of violence under U.S.S.G. § 4B1.2(a) (analogous to 18 U.S.C. § 16(a)). The court found that 18 Pa. Cons. Stat. § 3701(a)(1) is divisible and, applying the modified categorical approach, determined that Khim was convicted under subsection (ii), which categorically constitutes a crime of violence.

Fifth Circuit

- [United States v. Garrido](#)

No. 15-40347, 2018 WL 4117683 (5th Cir. Aug. 29, 2018) (per curiam) (unpublished) (Crime of Violence)

On remand from the Supreme Court in light of [Sessions v. Dimaya](#), 138 S. Ct. 1204 (2018),

the Fifth Circuit again upheld Garrido's conviction and sentence for unlawful reentry under section 276(b)(2) of the Act based on his prior conviction for aggravated robbery with a deadly weapon under Texas Penal Code § 29.03. Following its precedent in *United States v. Lerma*, 877 F.3d 628 (5th Cir. 2017), the court held that Texas Penal Code § 29.03 is divisible, and that a "conviction based on § 29.03(a)(2), which lists as an element that the defendant 'use[d] or exhibit[ed] a deadly weapon,' 'has as an element the threatened use of physical force against the person of another.'" Accordingly, the court concluded that Garrido's conviction constitutes a crime of violence under 18 U.S.C. § 16(a) (force clause), such that his sentence under section 276(b)(2) of the Act was proper notwithstanding Dimaya.

Ninth Circuit

- [Moreno-Mandujano v. Sessions](#)

No. 15-70136, 2018 WL 4204101 (9th Cir. Sept. 4, 2018) (unpublished) (False Claim to U.S. Citizenship)

The Ninth Circuit granted the PFR, holding that Moreno's oral representation to his prospective private employer that he was a U.S. citizen is insufficient to establish a violation of section 216(a)(6)(C)(ii)(I) of the Act by a false representation of U.S. citizenship. Relying on *Diaz-Jimenez v. Sessions*, No. 15-73603 (9th Cir. Aug. 30, 2018), the court concluded that § 216(a)(6)(C)(ii)(I) applies only to written false representations of U.S. citizenship.

Tenth Circuit

- [United States v. Baker](#)

No. 17-2174, 2018 WL 4232030 (10th Cir. Sept. 6, 2018) (Crime of Violence)

The Tenth Circuit affirmed the district court, concluding that Baker has three predicate convictions in New Mexico for violent felonies under the ACCA's elements clause (analogous to 18 U.S.C. § 16(a)), and therefore is properly serving an enhanced sentence as a career criminal. Following *United States v. Garcia*, 877 F.3d 944 (10th Cir. 2017) (determining that simple robbery under N.M. Stat. Ann. § 30-16-2 categorically constitutes a violent felony under the ACCA), the court concluded that Baker's convictions under N.M. Stat. Ann. § 30-16-2 for robbery "while armed with a deadly weapon" also categorically constitute violent felonies under the ACCA. The court further determined that aggravated battery with a deadly weapon under N.M. Stat. Ann. § 30-3-5(A), (C) "has as an element the use, attempted use, or threatened use of physical force against the person of another," and thus serves as a third prior violent felony conviction.

- [Guevara-Villacorta v. Sessions](#)

No. 18-9508, 2018 WL 4212126 (10th Cir. Sept. 5, 2018) (unpublished) (Motion to Reopen; In Absentia)

The Tenth Circuit denied the PFR, affirming the Board's decision to deny Guevara-Villacorta's motion to reopen his removal proceedings. The court determined that the requirements of sections 240(b)(5)(C)(i) and (ii) of the Act "simply establish a threshold that must be satisfied before an order can permissibly be rescinded," and whether an order is actually to be rescinded "lies within the discretion of the IJ and the Board." It further rejected Guevara-Villacorta's argument that due diligence is not a factor that can be considered by the Board in considering a motion to reopen, and found the Board did not abuse its discretion in considering Guevara-Villacorta's "undisputed and unexplained eight-year delay in seeking reopening."

Eleventh Circuit

- [Ye Enjie v. U.S. Attorney Gen](#)

No. 17-14980, 2018 WL 4211591 (11th Cir. Sept. 5, 2018) (unpublished) (Asylum)

The Eleventh Circuit denied the PFR, affirming the IJ's and Board's decisions to deny asylum and withholding of removal. The court determined that the mistreatment Ye Enjie experienced, viewed cumulatively, is insufficiently extreme to rise to the level of past persecution, particularly given the absence of physical injury or threats of physical harm. Furthermore, the court concluded that Ye Enjie did not demonstrate a well-founded fear of future persecution because he remained in Guangzhou for six months without incident, obtained employment, moved about freely, and his parents continued to live in their hometown and practice their Christian faith without interference.